

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission’s Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
Promoting Diversification of Ownership	)	MB Docket No. 07-294
In the Broadcasting Services	)	

To The Commission

**REPLY COMMENTS OF THE MINORITY MEDIA  
AND TELECOMMUNICATIONS COUNCIL**

The Minority Media and Telecommunications Council (MMTC) respectfully submits these reply comments in response to the Commission’s Public Notice<sup>1</sup> requesting comment on the BIA/Kelsey study (“Study”) that MMTC sponsored and submitted to the Commission.<sup>2</sup> In 2012, as part of a 50+ member coalition of national organizations, the Diversity and Competition Supporters (DCS), MMTC generally supported the Commission’s conclusion that a strict newspaper/broadcast cross ownership ban “is ‘not necessary’ to promote the Commission’s competition policy goals.”<sup>3</sup> While acknowledging the validity of historical concerns over the

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<sup>1</sup> See Media Bureau Invites Comments on Study Submitted by the Minority Media and Telecommunications Council in 2010 Quadrennial Review of Broadcast Ownership Rules, Public Notice, 2013 FCC LEXIS 2506 (“Public Notice”).

<sup>2</sup> See Mark Fratrik, Ph.D., The Impact of Cross Media Ownership On Minority/Women Owned Broadcast Stations, BIA-Kelsey (May 30, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7022419396> (last visited Aug. 6, 2013) (“Study”). The Study concludes that its results, “while not dispositive, do provide evidence that the impact of cross-media ownership on minority and women broadcast ownership is probably negligible.”

<sup>3</sup> Initial Comments of the Diversity and Competition Supporters in Response to the Notice of Proposed Rulemaking, 2010 Quadrennial Regulatory Review et al., MB Docket No. 09-182 (March 5, 2012), at p. 41 (“Initial Comments of DCS”) (citing 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Proposed

impact that cross-ownership might have on minority ownership, DCS addressed the issue in light of the practical climate surrounding the struggling newspaper industry. DCS took a nuanced position that it would not oppose some modest relaxation of the newspaper/broadcast cross-ownership rule “so long as the rule, as applied, would not discourage or lead to a decrease in minority ownership.”<sup>4</sup>

There is little dispute that the Commission needs data to support its policies<sup>5</sup> and a Commission-funded study on the impact of relaxation of the newspaper/broadcast cross-ownership rule on minority ownership would have been highly preferred, and would have

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Rulemaking, MB Docket No. 09-182 et al. (Dec. 22, 2011) (“NPRM”), at ¶¶88-90). “Consistent with previous Commission findings, we tentatively conclude that some newspaper/broadcast cross-ownership restrictions continue to be necessary to protect and promote viewpoint diversity.... We continue to believe, however, that a blanket prohibition on newspaper/broadcast combinations is overly broad and does not allow for certain cross-ownership that may carry public interest benefits. We tentatively affirm our earlier findings that the opportunity to share newsgathering resources and realize other efficiencies derived from economies of scale and scope may improve the ability of commonly owned media outlets to provide local news and information, and we seek comment on how cross-ownership may promote our localism goals. We tentatively conclude, as the Commission found in previous ownership reviews, that newspapers and broadcast stations do not compete in the same product market and, therefore, that the rule is not necessary to promote our competition goal.” NPRM at ¶89 (internal citations omitted).

<sup>4</sup> Initial Comments of DCS at p. 43.

<sup>5</sup> See e.g., Prometheus Radio Project v. FCC, 652 F.3d 431, 469 (3d Cir. 2011) (concluding that the FCC’s eligible entity definition was arbitrary and capricious). “Despite our prior remand requiring the Commission to consider the effect of its rules on minority and female ownership, and anticipating a workable SDB definition well before this rulemaking was completed, the Commission has in large part punted yet again on this important issue.” Id. at 471. See also Promoting Diversification of Ownership in the Broadcasting Services et al., Report and Order and Fourth FNPRM, 24 FCC Rcd 5896, 5902 ¶12 (2009). “Because comprehensive data on minority and female ownership of broadcast licensees are not available from other government and commercial sources, the quality and comprehensiveness of the Commission’s database materially affects the Commission’s and the public’s ability to achieve these goals.... [I]n this Order, we adopt changes to ownership reporting requirements to increase the accuracy and comprehensiveness of the data collected and to address the other flaws in collection of minority and female ownership information discussed in the GAO report and in this proceeding.” Id. See also Reply Comments of the Minority Media and Telecommunications Council, The State of Mobile Wireless Competition, WT Docket No. 13-135 (July 25, 2013) (urging the FCC to collect data on MWBEs as an indicator of wireless competition).

facilitated data gathering. Had the Commission, as a government entity, conducted the Study, it's highly likely that there would have been a considerably higher response rate.<sup>6</sup> Indeed, despite repeated requests to incorporate minority ownership into its data-driven policy priorities,<sup>7</sup> the Commission thus far has not allocated the funding to gather and incorporate data on diversity in its regulatory approach.<sup>8</sup>

A number of parties, including the Newspaper Association of America and the National Association of Broadcasters, responded favorably to the Study in the initial round of comments submitted in response to the Public Notice. However, some commenters criticized the Study's scope, methodology, and peer review process.<sup>9</sup> As outlined below, these methodological criticisms have little merit. While recognizing its limitations, the Commission should use the Study as an aid in helping it frame a decision on cross-ownership.

## **I. THE STUDY WAS NOT INTENDED TO BE EXHAUSTIVE IN NATURE**

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<sup>6</sup> Peer Reviewer Philip Napoli filed comments in this proceeding stating “the obvious and most significant shortcoming in the completed study is the very low response rate. This is something that was acknowledged by all participants in the discussion of the completed draft. In this discussion, I noted that the low response rate was, to some extent, indicative of a broader pattern in communications policy research, in which media/telecom organizations are resistant to providing policy researchers (whether independent or FCC-affiliated) with the kind of information that can facilitate better-informed policymaking ...” See Comments of Philip M. Napoli, Fordham University, MB Docket 09-182, MB Docket 07-294 (Aug. 5, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520936277> (last visited Aug. 6, 2013) (“Philip Napoli Comments”).

<sup>7</sup> See e.g., Initial Comments of DCS at p. 28 (Proposal 5: “Examination of how to promote minority ownership as an integral part of all FCC general media rulemaking proceedings; examine major rulemaking and merger applications to discern the potential impact of the proposed rules or transactions on minority and female ownership; consider ownership impact and viewpoint diversity as part of the qualifications of an applicant, without comparing applicant to other potential applicants, for assignment and transfer applications.”)

<sup>8</sup> See supra note 5 (where the court acknowledged the agency's failure to compile data on minority and female ownership in a timely manner).

<sup>9</sup> See, e.g., Comments of Free Press, MB Docket 09-182, MB Docket 07-294 (July 22, 2013) at pp. 3-4, available at <http://apps.fcc.gov/ecfs/document/view?id=7520932530> (last visited Aug. 6, 2013) (“Free Press Comments”) (Free Press urges the Commission not to “accord any weight” to the Study in the Quadrennial Review in part because it alleges that there are problems with the Study's “methodology and its presentation” that are “incurable.”)

Some objectors urge the Commission to afford the Study little weight due to its limited scope.<sup>10</sup> These objectors' comments are misplaced. The Study was designed and commissioned to serve as a piece of evidence that might assist the Commission in evaluating whether common ownership has a disparate impact on minority and/or women owned broadcast stations.<sup>11</sup> The Study was never intended to be dispositive of this issue. At the outset of the report on the Study's findings, BIA/Kelsey made it abundantly clear that the Study was "not a comprehensive examination of all of the women and/or minority owned stations in all of the markets in which a commonly owned cross media operation is present," but that Study results could provide only "some indications of whether there is an adverse or, especially, a disparate impact on these minority/women owned broadcasters."<sup>12</sup>

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<sup>10</sup> See, e.g., Comments of UCC *et al.*, MB Docket 09-182 (July 22, 2013) at pp. 2-4, available at <http://apps.fcc.gov/ecfs/document/view?id=7520932717> (last visited Aug. 6, 2013) ("UCC Comments") (alleging that "the Study is extremely limited in scope, but the conclusions drawn by Study author BIA/Kelsey with respect to the findings extend far beyond what can reasonably be extracted from the survey responses collected.") See also Comments of the Leadership Conference on Civil and Human Rights (July 23, 2013) at pp.1, .4, n.4, available at <http://apps.fcc.gov/ecfs/document/view?id=7520933039> (last visited Aug. 6, 2013) ("Leadership Conference Comments") (stating that "given the study's limitations, we cannot support any Commission action based on its findings... The MMTC study claimed to provide evidence demonstrating that 'cross-media interests' impact on minority and women broadcast ownership' does not justify 'tightening or retaining the rules.' The study suffers from several flaws, including a tiny sample of only 14 interviewees and a lack of transparency with respect to the markets studied. Further, the MMTC study conflates a lack of evidence with proof that no harm exists.")

<sup>11</sup> See MMTC Letter to the FCC, MB Docket 09-182, MB Docket 07-294 (May 30, 2013) at pp. 1-2, available at <http://apps.fcc.gov/ecfs/document/view?id=7022419395> (last visited Aug. 6, 2013) (quoting the Study at pp. 1-2) ("FCC and public interest groups' economists agree that the number of these instances is not large enough to conduct a random sample study to elicit generalizable results. On the other hand, what can be determined through this procedure is a reasonably clear sense of whether there is a material difference in the impact of these commonly owned local cross media operations. Of course, specific instances might be present that contradict these findings, but the results can provide some indications of whether there is an adverse or, especially, a disparate impact on these minority/women owned broadcasters.")

<sup>12</sup> See Study at p. 2.

In this proceeding, several organizations submitted comments illustrating their accurate understanding of the true nature and scope of the Study, while noting its potential usefulness to the Commission.<sup>13</sup> We urge the Commission to accord appropriate consideration to these comments.

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<sup>13</sup> See, e.g., Supplemental Comments of the Newspaper Association of America, MB Docket 09-182, MB Docket 07-294 (July 22, 2013) at pp. 2-3, available at <http://apps.fcc.gov/ecfs/document/view?id=7520932626> (last visited July 30, 2013) (“NAA Comments”) (stating that “this study provides additional evidence in the record that supports the Commission’s modest proposed changes to the cross-ownership rule,” and acknowledging that “MMTC never claimed that this study was definitive; MMTC explicitly states that the study ‘was not intended to be exhaustive.’”) See also Comments of the National Association of Broadcasters, MB Docket 09-182, MB Docket 07-294 (July 22, 2013) at pp. 5-7, available at <http://apps.fcc.gov/ecfs/document/view?id=7520932601> (last visited Aug. 5, 2013) (“NAB Comments”) (stating that “as the MMTC Study observes, it is not a ‘comprehensive random sample survey of all instances of local cross-ownership operations in markets with stations owned by minorities and women,’ and ‘[m]ore [survey] responses would have been preferred. However, the MMTC Study does provide ‘information from some [stations owned by minorities and women in markets with cross-ownership] about the competitive nature of local markets and the provision of news and information’ and compares their responses with those of station owners who are not minorities or women. NAB observes that the MMTC Study is entirely consistent with the record in this proceeding, which contains no evidence showing that modifications to the broadcast ownership rules to permit more efficient combinations, including newspaper/broadcast and radio/television cross-ownership, would harm competition, diversity, or localism. In fact, the record shows that such reforms would allow broadcast owners to structure their operations to take advantage of economies of scale and scope, thereby promoting their ability to compete more effectively with other outlets and allowing them to offer better local service. The Commission cannot, consistent with its statutory obligation under Section 202(h) of the 1996 Telecommunications Act and established case law, rely on the unproven assertion of a causal connection between the structural rules governing broadcast ownership and the levels of minority and female ownership as a rationale for retaining outdated rules, including the nearly four-decades old ban on newspaper/broadcast cross-ownership. Indeed, despite more than 70 years of structural ownership regulation, there has yet to be empirical evidence showing that rules restricting broadcast ownership generally have improved minority or female ownership specifically.”) Moreover, Study peer reviewer Philip Napoli believed that “in light of the limited amount of data that was able to be gathered,” he “was generally comfortable with how these limitations were addressed in the Conclusion (specifically, the recognition that the findings were ‘not dispositive’ and the acknowledgement that the study was “not intended as a comprehensive random sample survey of all instances of local cross-media operations in markets with stations owned by minorities and/or women.” Philip Napoli Comments at p. 3.

**A. The Study Is Based On Appropriate Methodology and Adequately Describes Its Sample Size**

Some objectors have alleged that the Study's methodology, sample size, and analysis are flawed.<sup>14</sup> MMTC rejects these claims and asks the Commission to do so as well. The Study provides a detailed description of the methodology used and the limitations of the Study.<sup>15</sup> MMTC also provided supplemental material to the Commission that included an in-depth explanation of the Study's sampling methodology, definitions of Study terms, the Study survey script and questionnaire, the number of respondents who responded to Study surveys, and the information collected regarding those who answered the Study surveys.<sup>16</sup> Moreover, as MMTC has explained to the Commission on the record, researchers made a valiant attempt to maximize the sample size.<sup>17</sup> As several commenters acknowledge,<sup>18</sup> the Study made clear that it was not a "comprehensive random sample survey of all instances of local cross-ownership operations in markets with stations owned by minorities and women," and that "more survey responses would have been preferred."<sup>19</sup> Certainly had the FCC commissioned or conducted the Study, a larger

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<sup>14</sup> See, e.g., Free Press Comments at pp. 3-4. See also UCC Comments at pp. 2-3 (stating that the Study "may not and should not be relied on by the Commission," in part because the Study "fails to evaluate the strongest theory advanced by UCC *et al.* and others why an increase in cross-ownership would harm ownership opportunities for minorities and women. Thus the Study reflects not at all on the arguments that public interest proponents have made in these dockets against relaxing cross-ownership restrictions.")

<sup>15</sup> See Study at pp. 2-5.

<sup>16</sup> See MMTC Letter to Commission Re: Supplemental Study Data (July 25, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520933682> (last visited Aug. 6, 2013) ("MMTC July 25, 2013 Letter").

<sup>17</sup> *Id.* at pp. 2-3.

<sup>18</sup> See NAB Comments at p.5. The NAB states that "rather than address the substance of the MMTC Report's findings, cross-ownership opponents attack the report for failing to provide a quantitative statistical analysis, something that the MMTC Report never purported to provide. At the outset of the report, BIA/Kelsey makes clear that the sample size is small." See NAB Comments at p. 3.

<sup>19</sup> See Study at pp. 4, 9.

sample would have been generated. Nonetheless, inasmuch as the results were so dramatic and clear-cut, and had been produced as the fruit of the well-established methodology of unaided recall, the Study researchers believed that the information obtained from the modest group of respondents was “sufficiently compelling and unambiguous to help answer the question of whether there is a disparate or adverse impact of commonly owned, local cross-media operations on minority or women owned broadcasters.”<sup>20</sup>

## **II. THE STUDY’S PEER REVIEW PROCESS WAS THOROUGHLY EXPLAINED AND PROFESSIONALLY ACCEPTED**

One objector, Free Press,<sup>21</sup> has challenged the Study’s peer review process and charged that it is “hard to believe” that the Study was “peer-reviewed by three distinguished scholars and, conducted in accordance with refereed journal standards.”<sup>22</sup> This objector alleges that MMTC “failed to include any written peer review evaluations in its submission of the study, a practice that is common for FCC-targeted studies. Nor did MMTC describe the details of the review process.” And without the slightest factual support, this objector adds a wild assertion that does not belong in a docketed proceeding.<sup>23</sup>

MMTC has provided the Commission with two detailed descriptions of the Study’s peer review process in which we thoroughly explained how peer reviewer input was obtained at each

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<sup>20</sup> Id. at p. 4.

<sup>21</sup> MMTC has just received Free Press’ confidential and redacted reply comments, filed subject to a protective order. The filing contains new arguments, which have no merit and which include, e.g., the false and frankly outrageous suggestion that MMTC might have instructed managers of certain stations to respond to the survey in particular ways. See Free Press Reply Comments (filed August 6, 2013) at 10. MMTC shall respond within (2) weeks.

<sup>22</sup> See Free Press Comments at pp. 18-19.

<sup>23</sup> Id. (asserting that “the absence of any written peer review raises the possibility that the reviewers were highly critical of the study’s methodology and/or its conclusions, but MMTC decided to plod ahead in the service of a political agenda.”) The Commission should disregard or strike this reprehensible bit of rhetoric, which reflects poorly on the organization propounding it. See also n. 21 supra (to the same effect). The Commission deserves better.

stage of the Study.<sup>24</sup> Furthermore, in comments filed in this proceeding, Study peer reviewer Philip Napoli has described and differentiated the Study's peer review process from typical peer reviews. According to Napoli:

[I]t is important to emphasize how this peer review context differed from a traditional academic peer review context. In this case, the organization soliciting the peer review was the same organization that was commissioning the study. This differs from a traditional academic peer review, in which the solicitor of the peer review (the academic journal) is distinct and separate from the researcher conducting the study. This is an important distinction in that the assumption of the peer reviewer going in is that the reviewer is not exerting the same kind of editorial authority as is the case in traditional academic peer review. In the context of a traditional academic peer review, the reviewers' feedback can lead to the study not being published. However, in a context such as the MMTC study, or a related context (in which I have participated in the past), such as serving as a peer reviewer for an FCC-commissioned study, the reviewer enters into the process with the understanding that his/her feedback is not likely going to impact whether the study is ultimately released.<sup>25</sup>

## **CONCLUSION**

Acknowledging the need for more data-driven research to inform the Commission's decisions, especially as they relate to minorities and women, MMTC sponsored the Study to aid the Commission. We remind the Commission that while the Study is not definitive, it should be

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<sup>24</sup> See MMTC July 25, 2013 Letter. See also MMTC Letter to Marlene Dortch Re: Erratum (Aug. 1, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520934949> (last visited Aug. 6, 2013) (responding to Commission questions on the peer review process). "Peer reviewer input was obtained in conference calls among the three peer reviewers, Dr. Fratrik and David Honig and in subsequent emails. The calls took place at the design stage to consider the draft instrument and sampling methodology, and at the pre-publication stage to consider the draft final report. The reviewers were not contacted or consulted during the actual interview process. On the design stage call, peer reviewers asked questions concerning the proposed methodology including: interviewee selection, sample size and the use of open ended questions, and ultimately expressed comfort with the study going forward using the draft instrument and sampling methodology given the time constraints. On the pre-publication call, the peer reviewers concurred that the study should be characterized as useful albeit it not reliably definitive primarily because of sample composition and the modest number of interviews." Id.

<sup>25</sup> See Philip Napoli Comments.



regarded as a useful piece of evidence to guide the Commission's decisions on its cross-ownership rules. While we have acknowledged the Study's limitations, we remind the Commission that before MMTC's Study, the record was devoid of any specific empirical data that could assist the Commission in determining how common ownership impacts minority and female broadcast stations. Further, we have provided the Commission with sufficient information on the Study's methodology and peer review process. MMTC thus urges the Commission to pay close attention to the commenters in this proceeding who correctly interpret the Study's scope and value. Finally, in subsequent quadrennial proceedings, we encourage the Commission to charter more definitive studies on how cross-ownership impacts the broadcast industry in general, and minority and women ownership in particular.

Respectfully submitted,

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